

EMPLOYERS, GOT VEGAN?: HOW ETHICAL
VEGANISM QUALIFIES FOR RELIGIOUS
PROTECTION UNDER TITLE VII

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“There is no fundamental difference between man and animals in their ability to feel pleasure and pain, happiness, and misery.”

—Charles Darwin

Currently, employees who decide to go vegan for ethical reasons have no protection at their workplaces. Their employers are free to refuse to accommodate their beliefs whether that be through refusing to accommodate an employee who will not wear the leather piece of a required uniform or refusing to provide a vegan food option at work parties. As more and more Americans make the shift to a vegan lifestyle, this protection is needed now more than ever. This Paper analyzes how an ethical vegan may qualify for employment discrimination protection under Title VII of the Civil Rights Act. In doing so, it argues that under the conscientious objector standard expressly adopted by the Equal Employment Opportunity Commission, ethical veganism should be protected as a religious belief. Such a claim would open the door to requiring employers to reasonably accommodate their ethical vegan employees’ requests.

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I. INTRODUCTION

In 1996, the Orange County Transportation Authority terminated a vegan bus driver when he refused to hand out coupons to passengers for use at a “burger joint.”¹ In 2002, Kaiser refused to employ a computer contractor who objected to obtaining a required mumps vaccine because of its animal-derived nature.² In 2010, Cincinnati Children’s Hospital Medical Center terminated a ten year customer representative employee for similarly refusing to obtain a flu vaccine because of its animal-derived nature.³ In 2016, Pip’s Original Doughnuts and Chai, a doughnut shop in Portland, Oregon, included in a help-wanted ad that anyone with “non-medical, non-religious dietary restrictions” need not apply.⁴ All four of these instances have one thing in common: the employees or prospective employees were being discriminated against based on their strong beliefs in animal rights. The term used to describe these individuals is “ethical vegan.”⁵

Instances of discrimination against employees with such beliefs are not isolated. Indeed, websites have begun to document reports of veganism discrimination,⁶ and provide resources for such individuals to determine if they are being harassed at work because of their beliefs.⁷ Additionally, for ethical vegans, there is also the fear of going to company-sponsored meals and not having a vegan option.⁸ What is the ethical vegan to do in situations like these?

¹ David Haldane, *Vegetarian Bus Driver Has Beef with Burger Offer*, L.A. TIMES (June 6, 1996), http://articles.latimes.com/1996-06-06/news/mn-12324_1_bus-driver [<https://perma.cc/59HC-DNKS>] (accessed Jan. 19, 2018).

² *Friedman v. S. Cal. Permanente Med. Grp.*, 125 Cal. Rptr. 2d 663, 666 (App. 2002).

³ *Chenzira v. Cincinnati Children’s Hosp. Med. Ctr.*, 2012 WL 6721098, at *1 (S.D. Ohio 2012).

⁴ Pip’s Original Doughnuts & Chai, *Best Job in Portland?*, POACHED (July 21, 2016), <https://portland.poachedjobs.com/jobs/best-job-in-portland-2/> [<https://perma.cc/SL6X-8UH4>] (accessed Jan. 19, 2018).

⁵ The term “ethical vegan” does not have one precise definition. Its definition, as used in this Paper, will be defined thoroughly in Section II.A.

⁶ *Unfair Treatment and Discrimination Reports*, INT’L VEGAN RTS. ALLIANCE, <http://www.theivra.com/reports.html> [<https://perma.cc/6NJN-39LD>] (accessed Jan. 19, 2018).

⁷ *How to Handle Workplace Discrimination*, VEGAN SOC’Y, <https://www.vegan-society.com/resources/solutions/how-handle-workplace-discrimination> [<https://perma.cc/7WEW-HVWN>] (accessed Jan. 19, 2018).

⁸ See Kat, *Handling Business Lunches as the Only Vegetarian*, CORPORETTE (Oct. 20, 2015), <http://corporette.com/business-lunches-vegetarian/> (answering a reader’s question about how to deal with work events when there are no vegetarian options) [<https://perma.cc/KKT5-5M2K>] (accessed Jan. 19, 2018); see also Dianne, *Being Vegan*

This Paper argues that ethical vegans, whose beliefs infuse their life in such a way that their strong moral and spiritual principles guide them not only in their diet but also in many of their life choices, qualify for Title VII protection from religious discrimination. Part II will begin by establishing a background of both the requirements of an ethical vegan and the general framework of federal employment discrimination law. Part III will analyze the meaning of religion in the context of Title VII, as well as discuss prior instances where claimants have argued that their veganism qualifies as a religion for employment discrimination purposes. Finally, Part IV will argue why and how the ethical vegan fits into this framework.

II. AN INTRODUCTION TO VEGANISM AND DISCRIMINATION

An individual's diet can vary drastically from person to person. These variations can be due to specific allergies to foods like peanuts,⁹ to medical conditions like celiac disease,¹⁰ or even to strong religious beliefs condemning consumption of specific food like those of Buddhists and Jews.¹¹ In addition to the “non-voluntary” reasons for altering the food one eats, there are also individual choices one makes about their food. Sometimes this will come in the wake of a fad—for example the Atkins diet caused people to significantly reduce their carbohydrate intake¹²—and other times strong beliefs of how the world can and should function influence these decisions, for example the ethical vegan. This Part will begin by briefly discussing the meaning of ethical veganism before delving into the basics of the federal employment discrimination laws.

in a Non-Vegan Workplace, CHIC VEGAN (Aug. 21, 2012), <http://www.chicvegan.com/being-vegan-in-a-non-vegan-workplace/> (outlining various tips on how to be vegan in a traditional work environment) [<https://perma.cc/B9JR-JMPB>] (accessed Jan. 19, 2018).

⁹ “More than 3 million people in the United States report being allergic to peanuts, tree nuts, or both.” *Peanut Allergy*, ORAL IMMUNOTHERAPY CTR., <http://www.oitcenter.com/peanut-allergy.htm> [<https://perma.cc/QV6J-TR3B>] (accessed Jan. 19, 2018).

¹⁰ About one percent of the United States population, or 1 in 133 Americans, have celiac disease. *Celiac Disease: Fast Facts*, BEYOND CELIAC, <http://www.beyondceliac.org/celiac-disease/facts-and-figures/> [<https://perma.cc/8D5V-R5K2>] (accessed Jan. 19, 2018). Celiac disease is an “autoimmune disease that damages the villi of the small intestine and interferes with absorption of nutrients from food.” *Id.* The only existing treatment for Celiac disease is adherence to a gluten-free diet. *Id.*

¹¹ Various religions proscribe certain food and drink from their practice for many different reasons. For example, Buddhism proscribes meat from the diet in order to obtain pureness, whereas Judaism prohibits eating meat and dairy at the same time per the teachings of the Torah. See *Religion and Dietary Practices*, DIET.COM, <http://www.diet.com/g/religion-and-dietary-practices> [<https://perma.cc/UD3B-DCAR>] (accessed Jan. 19, 2018) (listing some of the religious dietary restrictions and their underlying rationale).

¹² Margaret Webb Pressler, *Low-Carb Fad Fades, and Atkins Is Big Loser*, WASH. POST (Aug. 2, 2005), <http://www.washingtonpost.com/wp-dyn/content/article/2005/08/02/AR2005080200276.html> [<https://perma.cc/DT2X-7ZLN>] (accessed Jan. 19, 2018).

A. *Ethical Vegan: Defined*

This paper will focus on the ‘ethical’ vegan. To be an ethical vegan, one must first be a vegan in one’s diet. The primary distinction between a vegetarian and a vegan is their consumption of animal-derived items other than ‘meat,’ or “animal flesh.”¹³ Vegetarians will abstain from meat but still consume eggs and dairy, but vegans do not consume “any animal-derived items,” including dairy foods and eggs.¹⁴ Thus, the dictionary defines a vegan as “a strict vegetarian who consumes no animal food or dairy products.”¹⁵ As of 2014, sixteen million people, or two and a half percent of the United States population, consume no animal or dairy products.¹⁶ This number is up drastically from 2009, when vegans and vegetarians combined composed only one percent of the United States population.¹⁷ Veganism is thus very much on the rise—and as a result the difficulties of keeping a vegan diet are also increasing.

In addition to abiding by a vegan diet, the ethical vegan must also embody a corresponding ideology. However, people choose veganism for many reasons, and may not necessarily adopt the corresponding ethical belief in animal rights. For example, some individuals adopt a vegan diet for the health effects.¹⁸ A vegan diet has been linked to weight loss¹⁹ as well as “lower BMIs, reduced risk of type II diabetes[,] lower incidence of cardiovascular disease . . . [and] lower rates of certain cancers.”²⁰ Alternatively, people may choose a vegan diet due to environmental or world hunger concerns.²¹ These concerns are particularly noteworthy as world organizations attempt to combat climate change by advocating for a vegan diet.²² Finally, there is the “ethical

¹³ *Vegetarian vs. Vegan: What’s the Difference?*, PETA2, <http://www.peta2.com/about/frequently-asked-questions/what-is-the-difference-between-a-vegetarian-and-a-vegan/> [https://perma.cc/T5TM-VE5D] (accessed Jan. 19, 2018).

¹⁴ *Id.*

¹⁵ *Vegan*, MERRIAM-WEBSTER, <http://www.merriam-webster.com/dictionary/vegan> [https://perma.cc/5KRM-4U6H] (accessed Jan. 19, 2018).

¹⁶ Nadine Watters, *16 Million People in the US Are Now Vegan or Vegetarian!*, RAW FOOD WORLD, <https://news.therawfoodworld.com/16-million-people-us-now-vegan-vegetarian/> [https://perma.cc/GMC5-B4RK] (accessed Jan. 19, 2018).

¹⁷ *Veganism Is a Woman’s Lifestyle, According to Statistics*, HUFFINGTON POST (updated Apr. 1, 2014, 9:28 AM), http://www.huffingtonpost.com/2014/04/01/vegan-woman-lifestyle_n_5063565.html [https://perma.cc/C3JS-TZKY] (accessed Jan. 19, 2018).

¹⁸ Perri O. Blumberg, *11 Convincing Reasons that Going Vegan Isn’t Crazy*, READER’S DIG., <http://www.rd.com/health/healthy-eating/going-vegan/> [https://perma.cc/47YH-UCNE] (accessed Jan. 19, 2018).

¹⁹ Vegans “on average weigh five- to twenty-percent less than meat eaters.” *Id.*

²⁰ *Id.*

²¹ DONNA MAURER, *VEGETARIANISM—MOVEMENT OF MOMENT: PROMOTING A LIFESTYLE FOR CULT CHANGE* 3 (2002).

²² A UN report in 2010 urged that a vegan diet is necessary to save the world from hunger and the effects of climate change. See Felicity Carus, *UN Urges Global Move to Meat and Dairy-Free Diet*, GUARDIAN (June 2, 2010, 1:09 PM), <https://www.theguardian.com/environment/2010/jun/02/un-report-meat-free-diet> [https://perma.cc/AWL6-KX3A] (accessed Jan. 19, 2018) (“Animal products cause more damage than [producing] con-

vegan.” This is the individual who expresses “a total rejection of using animals [which] extends far past the plate or the grocery store.”²³ This Paper argues it is the ethical vegan—the individual who chooses to be a vegan not just in their dietary eating habits but whose life-choices also exhibit their strong beliefs in animal rights—who should qualify for religious protection under the United States’ Employment Discrimination laws.

B. Federal Employment Discrimination Law: The Basics

Because this Paper focuses on the ethical vegan’s relationship with the employment discrimination laws, it is important to give background on how these laws function. Several federal laws proscribe different means of employment discrimination.²⁴ The main federal statute on Employment Discrimination is Title VII of the Civil Rights Act of 1964, as amended.²⁵ This statute prohibits employment discrimination “because of” one of the five outlined categories: race, color, religion, sex, or national origin.²⁶

Making a claim for each protected category within Title VII brings with it its own construct of requirements. This paper will focus solely on a religion claim. However, the religious discrimination laws protect many different aspects of an employee’s job. First, it forbids discrimination when “it comes to any aspect of employment, including hiring, firing, pay, job assignments, promotions, layoff, training, fringe benefits, and any other term or condition of employment.”²⁷ Second, it for-

struction minerals such as sand or cement, plastics or metals. Biomass and crops for animals are as damaging as [burning] fossil fuels.”).

²³ Eva Lampert, *If You Are on a Plant Based Diet, Stop Calling Yourself Vegan!*, ECORAZZI (Jan. 28, 2016), <http://www.ecorazzi.com/2016/01/28/if-you-are-on-a-plant-based-diet-stop-calling-yourself-vegan/> [https://perma.cc/79NX-4BDT] (accessed Jan. 19, 2018). Some individuals even believe that the ethical vegan is really just a vegan and the health vegan is just a “plant-based” eater. *See, e.g.*, KD Angle-Traegner, *Are Dietary Vegans Vegan at All?*, YOUR DAILY VEGAN (Mar. 6, 2013), <http://www.yourdailyvegan.com/2013/03/are-dietary-vegans-vegan-at-all/> [https://perma.cc/L5A5-CBSK] (accessed Jan. 19, 2018) (questioning whether vegans who are vegan only for the health benefits should call themselves “vegan”).

²⁴ *See, e.g.*, Equal Pay Act, 29 U.S.C. § 206 (2012) (prohibiting sex-based discrimination of wages); Age Discrimination in Employment Act of 1967, 29 U.S.C. §§ 621–34 (2012) (prohibiting arbitrary employment discrimination based on age); Family Medical Leave Act of 1993, 29 U.S.C. § 2601 (2012) (attempting to minimize “the potential for employment discrimination on the basis of sex”); Americans with Disabilities Act of 1990, 42 U.S.C. § 12101 (2012) (prohibiting discrimination based on disabilities); Civil Rights Act of 1964, 42 U.S.C. § 2000e–2 (2012) (prohibiting discrimination based on “race, color, religion, sex, or national origin”).

²⁵ This statute only applies to “private employers with 15 or more employees and labor organizations having 15 or more members, to state and local governments, to educational institutions, and to certain parts of the federal government itself.” ARTHUR B. SMITH ET AL., *EMPLOYMENT DISCRIMINATION LAW* 189 (8th ed. 2016).

²⁶ 42 U.S.C. § 2000e–2(a).

²⁷ *Laws, Regulations, Guidance & MOUs*, U.S. EQUAL EMP. OPPORTUNITY COMMISSION, <https://www.eeoc.gov/laws/types/religion.cfm> [https://perma.cc/C9XC-9LW8] (accessed Jan. 19, 2018).

bids harassment on the basis of an employee's religion.²⁸ Third, it forbids segregation based on religion, including religious garb and grooming practices.²⁹ Further, upon notification by the employee of religious conflicts with an employer's requirement, Title VII requires the employer "reasonably accommodate an employee's religious beliefs or practices, unless doing so would cause more than a minimal burden on the operations of the employer's business."³⁰

Every religious discrimination claim under Title VII has two basic elements. The plaintiff must prove their belief is: (1) "sincerely held";³¹ and, (2) "religious."³² In most claims, once the claimant proves these elements, employers can raise a defense proving they could not hire the claimant because the job requires something the plaintiff cannot do because of their religion.³³ This defense is commonly known as a bona fide occupational qualification (BFOQ). To prove a BFOQ defense, the employer must show: (1) the requirement goes to the essence of the business, and (2) all or substantially all people of that religion could not perform the job properly.³⁴

Every employment discrimination claim under Title VII is fact-specific and its success will depend on the plaintiff's situation.³⁵ However, once an employee can fit their ethical vegan or vegetarian beliefs into the protected religion category of Title VII, the door to discrimination claims will be opened. Thus, the next Part will discuss what religion means in the context of Title VII.

III. RELIGION: DEFINED AND ARGUED

The definition of religion as used in employment discrimination law is not as intuitive as it may seem. Indeed, "religion" has been used by conscientious objectors to claim exemption from the draft during

²⁸ *Id.* ("Harassment can include, for example, offensive remarks about a person's religious beliefs or practices. Although the law doesn't prohibit simple teasing, offhand comments, or isolated incidents that aren't very serious, harassment is illegal when it is so frequent or severe that it creates a hostile or offensive work environment or when it results in an adverse employment decision (such as the victim being fired or demoted). The harasser can be the victim's supervisor, a supervisor in another area, a co-worker, or someone who is not an employee of the employer, such as a client or customer.")

²⁹ *Id.*

³⁰ *Id.*

³¹ *Redmond v. GAF Corp.*, 574 F.2d 897, 904 n.12 (7th Cir. 1978).

³² *Id.*

³³ *See Int'l Union v. Johnson Controls*, 499 U.S. 187, 215–16 (1991) (finding that the absence of pregnancy was a bona fide occupational qualification for working in a job which requires exposure to lead and thus entails major health risks).

³⁴ *See id.* (holding that "an employer must direct its concerns about a woman's ability to perform her job safely and efficiently to those aspects of the woman's job-related activities that fall within the 'essence' of the particular business").

³⁵ *See U.S. Equal Emp't Opportunity Comm'n v. IBP, Inc.*, 824 F. Supp. 147, 152 (C.D. Ill. 1993) (stating that in cases involving religious accommodation, "[t]he reach of an employer's obligation depends upon whether a proposed accommodation is reasonable; however, the 'reasonableness' of a proposed accommodation must be determined on a case by case basis").

the Vietnam War.³⁶ This Part will begin by dissecting how Title VII defines religion. After analyzing this broad statutory term, this Part will discuss the three instances where individuals tried to bring an employment discrimination claim alleging their veganism constituted a religion.

A. *The Definition of Religion: Unraveling Title VII*

Title VII protects an employee's "religion" from employment discrimination.³⁷ Section 702(j) defines religion to include "all aspects of religious observance and practice, as well as belief."³⁸ However, in defining religion through the use of the term "religious observance and practice,"³⁹ the statute leads to a strange and rather circular result. Thus, to understand what religion really means, claimants must look to the Equal Employment Opportunity Commission (EEOC) guidelines, "whose regulations are entitled to 'great deference.'"⁴⁰

The EEOC, as empowered by the statute, sought to alleviate this definitional headache by passing their own guidelines.⁴¹ The EEOC guidelines state that religious practices "include moral or ethical beliefs as to what is right and wrong which are sincerely held with the strength of traditional religious views."⁴² Further, the fact that only one individual holds these beliefs or that the religion the claimant professes to belong to does not require such a belief is not determinative.⁴³ The guidelines then reference two cases, *United States v. Seeger*, 380 U.S. 163 (1965) and *Welsh v. United States*, 398 U.S. 333 (1970).⁴⁴ *Seeger* and *Welsh* both rose to the Supreme Court as conscientious objec-

³⁶ See *U.S. v. Seeger*, 380 U.S. 163, 164–65 (1965) (hearing a claim under the Universal Military Training and Service Act that the petitioners were conscientious objectors to war because of their "religious training and belief"); see also *Welsh v. U.S.*, 398 U.S. 333, 335 (1970) (hearing a claim under the Universal Military Training and Service Act that the petitioner was a conscientious objector to war "by virtue of religious training and belief").

³⁷ 42 U.S.C. § 2000e–2(a).

³⁸ 42 U.S.C. § 2000e(j).

³⁹ *Id.*

⁴⁰ *Phillips v. Martin Marietta Corp.*, 400 U.S. 542, 545 (1971) (quoting *Udall v. Tallman*, 380 U.S. 1, 16 (1965)).

⁴¹ "In most cases whether or not a practice or belief is religious is not at issue. However, in those cases at which the issue does exist, the Commission will define religious practices to include moral or ethical beliefs as to what is right and wrong which are sincerely held with the strength of traditional religious views. This standard was developed in *United States v. Seeger*, 380 U.S. 163 (1965) and *Welsh v. United States*, 398 U.S. 333 (1970). The Commission has consistently applied this standard in its decisions. The fact that no individual espouses such beliefs or the fact that the religious group to which the individual professes to belong may not accept such belief will not determine whether the belief is a religious belief of the employee or prospective employee. The phrase "religious practice" as used in these Guidelines includes both religious observances and practices, as stated in section 701(j), 42 U.S.C. 2000e(j)." 29 C.F.R. § 1605.1 (2016).

⁴² *Id.*

⁴³ *Id.*

⁴⁴ *Id.*

tor claims under the Universal Military Training and Service Act, which exempts individuals from fighting in the war if “by reason of their religious training and belief [they] are conscientiously opposed to participation in war in any form.”⁴⁵

In *Seeger*, the Court noted the importance of the development of the conscientious objector claim by citing Harlan Fiske Stone, later Chief Justice, in declaring “both morals and sound policy require that the state should not violate the conscience of the individual.”⁴⁶ The Court’s formulated test evaluates “whether a given belief that is sincere and meaningful occupies a place in the life of its possessor parallel to that filled by the orthodox belief in God of one who clearly qualifies for the exemption.”⁴⁷ Ultimately, the Court concluded it was “clear that the beliefs which prompted [Seeger’s] objection occupy the same place in his life as the belief in a traditional deity holds in the lives of his friends, the Quakers.”⁴⁸

Seeger, on his printed Selective Service System Form, left the answer to the question about a belief in a Supreme Being open.⁴⁹ He declared his faith was a “belief in and devotion to goodness and virtue for their own sakes, and a religious faith in a purely ethical creed.”⁵⁰ Thus, by Seeger’s own admission his qualifying religion was one based primarily on philosophical and ethical beliefs.⁵¹ This was emphasized by his placing of quotation marks around the word “religious” and his striking of the word “training” from the form.⁵² Nevertheless, the Court found his beliefs qualified for a conscientious objector exemption under the Universal Military Training and Service Act.⁵³

Welsh took this standard even further. Like *Seeger*, *Welsh* arose as a conscientious objector claim to the draft.⁵⁴ However, *Welsh* tested the limits of the meaning of religion by entirely striking the words “my religious training” so his statement read, “I am by reason of my belief, conscientiously opposed to participation in war in any form.”⁵⁵ Despite being “brought up in religious homes and attend[ing] church in [his] childhood,” *Welsh*, similarly to *Seeger*, could not “definitely affirm or deny” his respective beliefs in a “Supreme Being.”⁵⁶ Further, the Court noted “[n]either *Seeger* nor *Welsh* continued his childhood religious

⁴⁵ *Welsh*, 398 U.S. at 335; *Seeger*, 380 U.S. at 164–65.

⁴⁶ *Seeger*, 380 U.S. at 170.

⁴⁷ *Id.* at 165–66.

⁴⁸ *Id.* at 187.

⁴⁹ *Id.* at 166.

⁵⁰ *Id.*

⁵¹ *See id.* (discussing *Seeger*’s basis of his beliefs, which included philosophers such as Aristotle and Spinoza).

⁵² *See Welsh*, 398 U.S. at 337–38 (referencing a statement printed in the Selective Service Form, which stated, “I am by reason of my religious training and belief, conscientiously opposed to participation in war in any form.”).

⁵³ *Seeger*, 380 U.S. at 166.

⁵⁴ *Welsh*, 398 U.S. at 335.

⁵⁵ *Id.* at 336–37.

⁵⁶ *Id.* at 335, 337.

ties into young manhood, and neither belonged to any religious group or adhered to the teachings of any organized religion during the period of his involvement with the Selection Service System.”⁵⁷

The Court focused instead on both Seeger and Welsh’s affirmative declarations “that they held deep conscientious scruples against taking part in wars where people were killed [because] [b]oth strongly believed that killing in war was wrong, unethical, and immoral, and their consciences forbade them to take part in such an evil practice.”⁵⁸ The Court noted that for them “that voice was so loud and insistent that both men preferred to go to jail rather than serve in the Armed Forces.”⁵⁹

The *Welsh* Court noted the *Seeger* Court’s declaration that:

If an individual deeply and sincerely holds beliefs that are purely ethical or moral in source and content but that nevertheless impose upon him a duty of conscience to refrain from participating in any war at any time, those beliefs certainly occupy in the life of that individual ‘a place parallel to that filled by . . . God’ in traditionally religious persons.⁶⁰

Further, the Court rejected the Government’s two arguments attempting to limit the test developed in *Seeger* and thus ended up broadening it.

First, the Court rejected the Government’s argument that “Welsh was far more insistent and explicit than Seeger in denying that his views were religious” through his striking of the word religious as compared to Seeger’s insertion of quotations around the word “religious.”⁶¹ In doing so, the Court noted very few registrants fully understand the broad scope of the word religious as used in the statute, and thus reliance on their characterization “is a highly unreliable guide.”⁶² Second, the Court rejected the notion that Welsh’s views were “essentially political, sociological, or philosophical views or a merely personal moral code.”⁶³ The Court broke the “essentially political, sociological, or philosophical views or a merely personal moral code” exclusion into two groups not worthy of religious protection.⁶⁴ These two groups include: (1) “those whose beliefs are not deeply held”; and (2) “those whose objection to war does not rest at all upon moral, ethical, or religious principle but instead rests solely upon considerations of policy, pragmatism, or expediency.”⁶⁵

Immediately dismissing the first group as not applicable to Welsh, the Court moved to address the second group. Though admitting Welsh’s objections were “undeniably based in part on his perception of

⁵⁷ *Id.* at 336.

⁵⁸ *Id.* at 337.

⁵⁹ *Id.*

⁶⁰ *Id.* at 340.

⁶¹ *Id.* at 341.

⁶² *Id.*

⁶³ *Id.* at 342.

⁶⁴ *Id.*

⁶⁵ *Id.* at 342–43.

world politics,” the Court pointed out these “exclusions are definitional and do not therefore restrict the category of persons who are conscientious objectors by ‘religious training and belief.’”⁶⁶ Thus, once a person’s beliefs are believed to be religious under the standards set out, their views would no longer be “essentially political, sociological, or philosophical . . . [or] a mere[] personal moral code.”⁶⁷ Welsh’s statement that he “believed the taking of life—anyone’s life—to be morally wrong” suggests his belief rested upon deep moral principles and thus qualified for the conscientious objector exemption as a “religious” belief.⁶⁸

B. Religion: Efforts to Apply the Religious Test to Veganism

The idea of an ethical vegan bringing a religious discrimination claim against their employer is not new.⁶⁹ However, the claim has never fully made its way to the courts on its merits. In 1996, the Orange County Transportation Authority began running a new promotion “to encourage people to take the bus by offering them free hamburgers each Tuesday through the month of June.”⁷⁰ To do this, they would require the bus driver to hand out the coupons to passengers.⁷¹ Although this seems harmless to the average individual, one of Orange County’s bus drivers, Bruce Anderson, objected strongly to this promotion and refused to participate.⁷²

Bruce Anderson can properly be called an ethical vegan. He refuses to eat meat, consume dairy products, or wear leather.⁷³ Mr. Anderson’s stand garnered the support of many animal rights organizations,⁷⁴ who ultimately filed a lawsuit on his behalf.⁷⁵ The lawsuit resulted in a settlement whereby the Orange County Transportation Authority agreed to pay Mr. Anderson \$50,000 and to “amend its employee handbook to explicitly state that it will abide by federal regulations governing religious and personal freedom in the workplace.”⁷⁶ Although the settlement “sen[t] a message to other em-

⁶⁶ *Id.* at 342, 343.

⁶⁷ *Id.* at 343.

⁶⁸ *Id.*

⁶⁹ Sherry F. Colb, *Is Veganism a Religion Under Anti-Discrimination Law?*, VERDICT, (Mar. 6, 2013), <https://verdict.justia.com/2013/03/06/is-veganism-a-religion-under-anti-discrimination-law> [<https://perma.cc/V4B3-SXEU>] (accessed Jan. 19, 2018).

⁷⁰ David Haldane, *supra* note 1.

⁷¹ *Id.*

⁷² *Id.*

⁷³ *Id.*

⁷⁴ *Id.*

⁷⁵ David Haldane, *Vegetarian Bus Driver Settles Suit Against Agency for \$50,000*, L.A. TIMES (Nov. 20, 1996), http://articles.latimes.com/1996-11-20/news/mn-992_1_bus-driver [<https://perma.cc/CRF6-3SSA>] (accessed Jan. 19, 2018).

⁷⁶ *Id.* (quoting Mr. Anderson’s attorney, Gloria Allred, stating, “This sends a message to other employers that they can’t discriminate. . . . That prohibition also covers moral and ethical beliefs. Employees don’t leave their civil rights at the door.”).

ployers,”⁷⁷ settlements carry no precedential value and thus provide no legal support for future ethical vegans suffering discrimination in the workplace.

In 2002, Jerold Friedman brought a suit attempting to establish that precedent. Friedman worked temporarily as a computer contractor in a pharmaceutical warehouse owned by defendants.⁷⁸ Upon obtaining a permanent position, the company informed him he must obtain a mumps vaccine.⁷⁹ The plaintiff alleged that because the mumps vaccine “is grown in chicken embryos” it violated his “system of beliefs” and he considered it “immoral.”⁸⁰ In the published section of the opinion, the California court analyzed “whether veganism is a ‘religious creed’ within the meaning of the California Fair Employment and Housing Act (FEHA).”⁸¹ The FEHA defined “religious creed” as “any traditionally recognized religion as well as beliefs, observations, or practices which an individual sincerely holds and which occupy in his or her life a place of importance *parallel to that of traditionally recognized religions*.”⁸² To determine what this means, the court applied tests from Judge Adam’s concurrence in *Malnak v. Yogi* and his opinion in *Africa v. Commonwealth of Pennsylvania*.⁸³ In both cases, the Third Circuit Court of Appeals was trying to compare the religion at issue with “traditional” theologies to determine whether it warrants First Amendment protection, not Title VII protection.⁸⁴

Friedman, an ethical vegan for nine years, alleged to believe that “all living beings must be valued equally and that it is immoral and unethical for humans to kill and exploit animals, even for food, clothing, and the testing of product safety for humans, and that such use is a violation of natural law and the personal religious tenants on which [Friedman] bases his foundational creeds.”⁸⁵ The court emphasized the conviction of Friedman’s beliefs by noting he “has even been arrested for civil disobedience actions at animal rights demonstrations.”⁸⁶ Ultimately, the court concluded ethical veganism does not qualify as a religious creed for the purposes of the California law because the court employs a less expansive test that requires a belief system to be comparable to traditional religions.⁸⁷ However, the opinion noted explicitly that the state statute at issue “adopts by its terms a less expansive definition of religion than that promulgated by the EEOC” in that it

⁷⁷ *Id.*

⁷⁸ *Friedman v. S. Cal. Permanente Med. Grp.*, 125 Cal. Rptr. 2d 663, 666 (Ct. App. 2002).

⁷⁹ *Id.*

⁸⁰ *Id.*

⁸¹ *Id.* at 665.

⁸² *Id.* at 666 (emphasis added).

⁸³ *Id.* at 685.

⁸⁴ *Id.* at 684.

⁸⁵ *Id.* at 665.

⁸⁶ *Id.* at 666.

⁸⁷ *Id.* at 682–83, 686.

narrows the test to one that “compares a belief system to more traditional religions.”⁸⁸

The issue remained largely untouched after *Friedman* for almost a decade. However, in 2012, Sakile Chenzira brought suit against her employer alleging religious discrimination under, among other things, Title VII of the Civil Rights Act of 1964.⁸⁹ Specifically, Ms. Chenzira, who worked as a customer service representative for more than a decade, alleged that her employer’s termination of her services because of her refusal to be vaccinated for the flu constituted religious discrimination based on her vegan beliefs.⁹⁰ As an alternative avenue for demonstrating Title VII protection, she also attached biblical excerpts to her request.⁹¹ Though the opinion does not discuss the relation of veganism to the flu shot, it is fairly well-known that most flu shots are made through utilization of animals in some form.⁹²

The only court opinion in the suit is an opinion denying the Defendant’s motion to dismiss.⁹³ The Defendant specifically argued that veganism is not a religion, but rather “no more than a dietary preference or social philosophy.”⁹⁴ The court, in a brief opinion, held that Ms. Chenzira stated a plausible claim for religious discrimination on the basis of her religious beliefs, noting her attachment of biblical excerpts, although not required, lent credence to her position.⁹⁵ Almost a full year after the court issued an opinion, the parties settled and did not disclose the terms of such settlement.⁹⁶

IV. HOW THE ETHICAL VEGAN FITS WITHIN THE TITLE VII FRAMEWORK

This Paper proposes that an ethical vegan fits within the religious framework of Title VII for two main reasons: (1) despite not fitting the

⁸⁸ *Id.* at 682–83.

⁸⁹ *Chenzira v. Cincinnati Children’s Hosp. Med. Ctr.*, No. 1:11-CV-00917, 2012 WL 6721098, at *1–2 (S.D. Ohio 2012).

⁹⁰ *Id.*

⁹¹ *Id.* at *4; *see also* Plaintiff’s Memorandum Contra Defendant Children’s Hospital’s Motion to Dismiss at 7, *Chenzira v. Cincinnati Children’s Hosp. Med. Ctr.*, No. 1:11-cv-00917-SAS-SKB, 2012 WL 6721098 (S.D. Ohio 2012) (“Therefore, whether the Court looks to the Code of Federal Regulations for guidance regarding acceptable practices which qualify for protection from religious discrimination or in the alternative looks to a Biblical basis for the Vegan beliefs, Plaintiff Chenzira has set forth two avenues for demonstrating that the Vegan beliefs are protected under Title VII . . .”).

⁹² *See How Influenza (Flu) Vaccines Are Made*, CTRS. FOR DISEASE CONTROL (Jan. 6, 2015), <http://www.cdc.gov/flu/protect/vaccine/how-fluvaccine-made.htm> [<https://perma.cc/9ZPU-QR7V>] (accessed Jan. 19, 2018) (noting that one of the steps involved in creating egg-based flu vaccines involves injecting vaccine viruses “into fertilized hen’s eggs” and then harvesting the fluid from the eggs).

⁹³ *Chenzira*, 2012 WL 6721098, at *4.

⁹⁴ *Id.*

⁹⁵ *Id.*

⁹⁶ Ben James, *Hospital Settles Religious Bias Suit Over Veganism*, LAW 360 (Oct. 7, 2013, 1:53 PM), <http://www.law360.com/articles/478582/hospital-settles-religious-bias-suit-over-veganism> [<https://perma.cc/AV3C-ZXZW>] (accessed Jan. 19, 2018).

traditional mold of a religion with a supreme being, ethical veganism does address ultimate ideas about life, death, and purpose through its core belief that all sentient beings are created equal; and (2) the definition of religion can, and should, be broader in the employment discrimination context than in the free exercise and establishment clause context because of its statutory nature and broad purpose to remedy discrimination of minorities. This part will conclude with the Paper's proposal that an ethical vegan whose moral beliefs regarding the relative equality among sentient beings permeating many aspects of a claimant's life beyond strictly diet should qualify for protection from religious discrimination.

A. The Lack of a Supreme Being Does Not Negate Ethical Veganism's Ultimate Ideas About Life, Death, and Purpose

The lack of a 'higher power' in ethical veganism is not fatal, or even required. In *Seeger* and *Welsh*, the test is not that the plaintiffs believe in a "Supreme Being."⁹⁷ Rather, both expressed uncertainties surrounding their beliefs—Seeger by adding quotations around the word religion and Welsh by crossing it out entirely.⁹⁸ Thus, the test enunciated, and subsequently incorporated into the EEOC regulation, asks whether the belief "occupies a place in the life of its possessor parallel to that filled by the orthodox belief in God."⁹⁹ Not all religions require a belief in a higher power. Non-theistic religions, as they are known, include Buddhism and Jainism.¹⁰⁰ Despite their lack of a belief in a higher power, courts and even the Supreme Court do not consider these religions any less deserving of protection under United States federal law. Indeed, the Supreme Court rejected the idea of confining religion to "a belief in *some particular kind* of religious concept" many years ago.¹⁰¹ The Fifth Circuit Court of Appeals has even explicitly acknowledged that atheism is protected under the federal employment discrimination laws.¹⁰² Further, the plaintiff in *Chenzira*, who survived a motion to dismiss on her veganism claim, explicitly acknowledged that the inclusion of biblical passages was merely to provide an alternative second avenue for demonstrating that Title VII protects vegan beliefs.¹⁰³

⁹⁷ *Welsh*, 398 U.S. at 339; *Seeger*, 380 U.S. at 165.

⁹⁸ *Welsh*, 398 U.S. at 337.

⁹⁹ *Id.* at 339; 29 C.F.R. § 1605.1.

¹⁰⁰ Robert G. Brown, *Non-Theistic Religions*, DUKE U. (Feb. 6, 2014), https://webhome.phy.duke.edu/~rgb/Philosophy/god_theorem/god_theorem/node22.html [<https://perma.cc/RWQ7-4FHA>] (accessed Jan. 19, 2018); see Jayaram V, *Jainism and Belief in God*, HINDUWEBSITE.COM, <http://www.hinduwebsite.com/jainism/jainsandgod.asp> [<https://perma.cc/XQA2-BS9S>] (accessed Jan. 19, 2018) (discussing the non-theistic components of Jainism).

¹⁰¹ *Torcaso v. Watkins*, 367 U.S. 488, 494 (1961).

¹⁰² *Young v. Sw. Savs. & Loan Ass'n.*, 509 F.2d 140, 144 (5th Cir. 1975).

¹⁰³ Plaintiffs Memorandum Contra Defendant Children's Hospital's Motion to Dismiss at 7, *Chenzira v. Cincinnati Children's Hosp. Med. Ctr.*, No. 1:11-cv-00917-SAS-SKB, 2012 WL 6721098 (S.D. Ohio 2012). Although organizations have tried to tie ethi-

Second, although the regulation under the FEHA requiring the belief or practice “to occupy a place in the employee’s life of ‘importance parallel to that of traditionally recognized religions’” constrained the court in *Friedman*, this requirement is not present anywhere in the federal discrimination statutory scheme—a fact the court itself notes.¹⁰⁴ Thus, the *Friedman* court’s application of tests derived from interpreting the Constitution is misplaced.¹⁰⁵ Title VII’s EEOC regulation and compliance manual suggests the test is different for its purposes.¹⁰⁶ The compliance manual, though not binding, states “religion typically concerns ‘ultimate ideas’ about ‘life, purpose and death.’”¹⁰⁷ In adopting that language, the compliance manual essentially adopts one of the factors from the multi-factored test promulgated by the Tenth Circuit.¹⁰⁸ This factor states:

1. Ultimate Ideas: Religious beliefs often address fundamental questions about life, purpose, and death. As one court has put it, “a religion addresses fundamental and ultimate questions having to do with deep and imponderable matters.” *Africa*, 662 F.2d at 1032. These matters may include existential matters, such as man’s sense of being; teleological matters, such as man’s purpose in life; and cosmological matters, such as man’s place in the universe.¹⁰⁹

Thus, a strong ethical or moral belief will usually also address ultimate ideas about: (1) purpose, (2) death, and (3) life to gain qualifica-

cal veganism to Biblical beliefs, that is not a course this Paper will address. *See* Sara Toth Stub, *Life After Brisket*, TABLET MAG. (Feb. 16, 2016, 12:00 AM), <http://www.tabletmag.com/jewish-life-and-religion/197361/life-after-brisket> [<https://perma.cc/EM7X-UJH5>] (accessed Jan. 19, 2018) (“And though, until recently, the trend was most obvious in secular Tel Aviv, interest in veganism is growing among the Orthodox [Jewish population], who draw inspiration and proofs from the Torah to defend their position that *halakha* forbids causing animals to suffer. Chief among these is a Genesis passage in which God forbids man from severing the limbs of living creatures. The precept to avoid cruelty to animals—or *tzaar balei chayim*—is also taken up in the Talmud in Tractate Shabbat, by Maimonides in his *Mishneh Torah*, and in the *Shulchan Aruch*, the most widely consulted code of Jewish law.”); *see also* 11 *Bible Quotes That Are Telling You to Go Vegan*, PETA, <http://www.peta.org/living/other/vegan-bible-quotes/> [<https://perma.cc/N5VG-J9FU>] (accessed Jan. 19, 2018).

¹⁰⁴ *Friedman v. S. Cal. Permanente Med. Grp.*, 125 Cal. Rptr. 2d 663, 683 (Cal. Ct. App. 2002).

¹⁰⁵ *See infra* Part III.B (analyzing why differing tests are allowable).

¹⁰⁶ *See* U.S. EQUAL EMP’T OPPORTUNITY COMM’N, NO. 915.003, EEOC COMPLIANCE MANUAL 7–8 (2008), <https://www.eeoc.gov/policy/docs/religion.pdf> [<https://perma.cc/GGS4-392E>] (accessed Jan. 19, 2018) [hereinafter MANUAL] (suggesting that the test is whether the beliefs concern ultimate ideas about life, purpose, and death or are mere personal preferences, social philosophies, political philosophies, or economic philosophies). Indeed, one commenter noted, “It’s an interesting case. In 2003, a California court decided veganism is not a ‘religious creed’ under California law, but the standard for being defined as a religion under federal law may not be as tough to meet.” Maureen Minehan, *Court Considers Veganism’s Status as a Religion*, EMP. ALERT (Thomson Reuters, Toronto, Ont.), Mar. 11, 2013, at 1.

¹⁰⁷ MANUAL, *supra* note 106, at 8.

¹⁰⁸ *United States v. Meyers*, 95 F.3d 1479, 1483 (10th Cir. 1996).

¹⁰⁹ *Id.*

tion as a religion in the federal employment context.¹¹⁰ Ethical veganism addresses these things. Each idea will be taken in turn.

In regards to the first prong, purpose, the Third Circuit interpreted this factor to mean that, “above all else, religions are characterized by their adherence to and promotion of certain underlying theories of man’s nature or his place in the Universe.”¹¹¹ The essential element of an ethical vegan’s lifestyle is faith in an interconnectedness of all life whereby an ethical vegan sees herself as “part of the natural world, rather than its owner or master.”¹¹² This is a concept similarly embodied by Buddhism, Taoism, and Jainism—all religions recognized as warranting constitutional protection.¹¹³ In applying this factor to a religion called “MOVE,” Judge Adams noted the organization “did not appear to take a position with respect to matters of personal mortality, human mortality, or the meaning and purpose of life.”¹¹⁴ However, ethical veganism does take a position in these regards. Ethical veganism and its strongest supporters truly believe “that all animals are equal and that animals are not ours to eat, to wear, to experiment on, use for human amusement, or abuse in any way.”¹¹⁵

Ethical veganism also addresses views about death. Its followers believe that death of all creatures should be natural—in accordance with the natural world. Animals capable of feeling “pleasure and pain, fulfillment and frustration, and contentment and fear” should not be made to suffer unnecessarily.¹¹⁶ This prong is directly similar to Welsh’s actions in the case, except instead of disavowing killing *humans* unnecessarily, the ethical vegan disavows killing *animals* unnecessarily.¹¹⁷ Further, despite Welsh’s striking of the word “religious,” the court recognized his “duty of conscience” guides him in a way

¹¹⁰ See MANUAL, *supra* note 106, at 7–8 (suggesting that beliefs must address ultimate ideas about purpose, death, and life to gain qualification as a religion in the federal employment context).

¹¹¹ *Africa v. Commonwealth of Pa.*, 662 F.2d 1025, 1035 (3d Cir. 1981); Bruce Friedrich, *The Church of Animal Liberation: Animal Rights as ‘Religion’ Under the Free Exercise Clause*, 21 *Animal L.* 65, 97 (2014).

¹¹² CARA HUNT, VEGAN VALUES, RELIGIOUS RIGHTS: A CULTURAL CRITIQUE OF ENTRENCHED ETHICS 7 (2010), <http://www.lclark.edu/live/files/6665-vegan-values-religious-rights> [<https://perma.cc/E42T-YSWJ>] (accessed Jan. 19, 2018).

¹¹³ Brief for Animal Legal Defense Fund as Amicus Curiae Supporting Plaintiff-Appellant at 10, *Friedman v. S. Cal. Permanente Med. Grp.*, 125 Cal. Rptr. 2d 663 (Ct. App. 2002) (No. B150017).

¹¹⁴ *Africa*, 662 F.2d at 1033.

¹¹⁵ Friedrich, *supra* note 111, at 97 (quoting the views of the People for the Ethical Treatment of Animals and Isaac Bashevis Singer regarding animal liberation).

¹¹⁶ Steve F. Sapontzis, *Ethical Vegetarianism*, in THE GLOBAL GUIDE TO ANIMAL PROTECTION 288, 288 (Andrew Linzey ed., 2013).

¹¹⁷ One commentator writes, “If one were to write an animal liberation pledge, it would probably sound like this: ‘I believe that animal life is valuable in and of itself. Therefore, I will not injure or kill any animal. I cannot, therefore, conscientiously comply with any insistence that I participate in activities that I feel are immoral and totally repugnant.’” Friedrich, *supra* note 111, at 95–96.

that is similar to traditionally religious persons.¹¹⁸ Thus, ethical vegans' duties of conscience guides them to avoid the unnecessary killing of sentient creatures.

In many ways, the ethical vegan's duty of conscience goes even further than did Welsh's and Seeger's claimed duty. While Welsh and Seeger opposed only the narrow avenue of killing of other humans,¹¹⁹ ethical vegans not only oppose the killing of sentient creatures, but also every practice that inflicts unnecessary suffering on such creatures.¹²⁰ Thus, ethical vegans strongly oppose factory farming because it inflicts great suffering on large numbers of animals annually, when other avenues to live without inflicting such harm exist.¹²¹ Similarly, ethical vegans oppose animal-tested or animal-derived products because, among other things, many synthetic fabrics can accomplish similar looks and textures without requiring suffering by sentient beings.¹²² That being said, the ethical creed does allow for the "[h]arvesting of corpses of animals who have lived normal lives and died of natural causes" as these animals would not have suffered unnecessarily.¹²³ As a result, an ethical vegan who consumes such animals likely still qualifies for the ideology since it does not inflict undue suffering on the animal. While many critics would argue the killing of a human is not the same as the killing of an animal, the sheer breadth of the practices ethical vegans oppose makes their duty of conscience larger than that argued in *Seeger* and *Welsh*.

Finally, ethical veganism also addresses ultimate ideas about life.¹²⁴ Unlike the beliefs at issue in *Seeger* and *Welsh*, these beliefs permeate more than just a one-time proclamation—they permeate every aspect of the individual's lives. They "derive[] from ethical principles based on faith and acceptance of an interconnectedness of all living beings, human and nonhuman, which has the ability to promote the well-being of its adherents."¹²⁵ For example, the plaintiff in *Friedman* testified as to how he structured every aspect of his life around the ultimate question of the value of animal life and death.¹²⁶

¹¹⁸ *Welsh*, 398 U.S. at 340.

¹¹⁹ *Id.* at 337.

¹²⁰ Sapontzis, *supra* note 116, at 288–89.

¹²¹ Sapontzis, *supra* note 116, at 289.

¹²² See Monika Markovinovic, *Pineapple Leather Is Here and It Looks Like a Real Game-Changer*, HUFFINGTON POST CANADA (updated Feb. 21, 2017, 5:08 AM), http://www.huffingtonpost.ca/2016/03/02/pineapple-leather_n_9368654.html [<https://perma.cc/AS7P-HJ2J>] (accessed Jan. 19, 2018) (discussing how designers are now making Piñatex, a leather-like product cultivated from the leaves of pineapples).

¹²³ Sapontzis, *supra* note 116, at 289.

¹²⁴ See *Ethical Veganism – Not Just About Food, but a Way of Life*, VEGAN SOULS, <http://www.vegansouls.com/ethical-veganism> [<https://perma.cc/R97N-DR7F>] (accessed Jan. 19, 2018) (“Ethical veganism isn’t just about not eating animals and animal products, but about not relying on animals in any form or fashion[—]not using fur nor wearing leather as well as eschewing other products that rely on animals.”).

¹²⁵ HUNT, *supra* note 112, at 3.

¹²⁶ *Friedman*, 125 Cal. Rptr. 2d at 665–66.

In some ways, when compared to the *Seeger* and *Welsh* cases where conscientious objections to a war was a one-time issue,¹²⁷ being an ethical vegan is worthier of protection due to its constant daily struggle. Ethical veganism is an ethical creed that not only presents itself in a rare moment of wartime, but permeates many, if not every, decision an individual makes from what clothing they can put on in the morning, to what cosmetics they can purchase, to what food they can eat, and even to what medications they can use.¹²⁸ In this way, ethical veganism is more akin to a devout orthodox Jewish person keeping a kosher house than a voluntary dietary restriction, like the Atkins Diet, or even a non-voluntary dietary restriction like peanut allergies.¹²⁹ For example, Jeffrey Freedman, an ethical vegan, “compares ethical veganism to a fast of Yom Kippur or Christian Lent where the adherent finds ‘spiritual sustenance’ rather than ‘dietary abstinence.’”¹³⁰

The *Friedman* court rejected the idea that ethical veganism is a religion by noting “[t]here is no apparent spirituality or otherworldly component to plaintiff’s beliefs.”¹³¹ However, the court was applying the more stringent test of the state statute’s definition and thus this language does not apply to the federal analysis. Under the federal law’s broader definition of religion and incorporation of *Welsh* and *Seeger*, a moral or ethical belief will qualify so long as it addresses “ultimate ideas.”¹³² Ethical veganism does address ultimate ideas about life, purpose, and death.

B. The Employment Context Does Not Present the Same Troublesome Issues for Religion as the Free Exercise or Establishment Clause Context Presents

A broader definition of religion should be allowed in the employment context as compared to other contexts because the employment realm is devoid of any thorny problems that may arise as a result of the Free Exercise and Establishment Clauses. As an example, one scholar notes that if veganism were deemed a religion, the teaching of a course on veganism in school may present an Establishment Clause problem.¹³³ Further, the Free Exercise and Establishment Clause represent a delicate balancing act with the First Amendment. For exam-

¹²⁷ See *Welsh*, 398 U.S. at 336–37 (involving a one-time demonstration of Welsh’s belief when he signed his exemption application); *Seeger*, 380 U.S. at 166–67 (involving a one-time demonstration of Seeger’s belief when he signed his exemption application).

¹²⁸ HUNT, *supra* note 112, at 25.

¹²⁹ See *supra* notes 10–13 and accompanying text (discussing various diets and dietary restrictions).

¹³⁰ *Id.* Indeed, it has even been noted that vegans “often perceive themselves as being spiritually orientated and are more likely than the general population to engage in practices such as meditation and yoga.” Maurer, *supra* note 21, at 13.

¹³¹ *Friedman*, 125 Cal. Rptr. 2d at 685.

¹³² MANUAL, *supra* note 106.

¹³³ Donna Page, *Veganism and Sincerely Held “Religious” Beliefs in the Workplace: No Protection Without Definition*, 7 U. PA. J. LAB. & EMP. L. 363, 401 (2005).

ple, in *Lukumi* the Court had to assess how to balance the Santeria's ritual of animal sacrifice with the city's claim that such public practices were "inconsistent with public morals, peace or safety" of the city.¹³⁴ Additionally, the *Meyers* court, in rejecting the claimant's Religious Freedom Restoration Act claim that he is the founder and Reverend of the Church of Marijuana, acknowledged the "slippery slope" problem a finding of religion would lead to in that realm.¹³⁵ Thus, narrow protection in that realm is understandable.

However, the employment context does not present such issues. The result that something is a religion for Title VII purposes, though it may not be a religion in other legal contexts, can be harmonized. Title VII reflects a legislative definition of religion. The legislature explicitly delegated authority to a federal agency to develop additional rules interpreting religion.¹³⁶ Conversely, the Free Exercise and Establishment Clause analyses of religion are a result of judicial interpretation.¹³⁷ There is no explicit delegation of authority to define religion and as a result, much of the analysis in this area is derived from judicially created tests. The EEOC's decision to incorporate two Supreme Court cases interpreting religion from a statute codifying the draft, rather than Supreme Court cases interpreting religion in the Free Exercise or Establishment Clause context, into its regulation defining religion is telling.¹³⁸ This incorporation suggests that the EEOC meant for religion to have a broader definition than it does in the Free Exercise or Establishment Clause realm.

Further, the express legislative purpose of Title VII is "to eliminate through the utilization of formal and informal remedial procedures, discrimination in employment based on . . . religion."¹³⁹ "Like other individuals who discover they exist within a cultural minority, a vegan may perpetually find herself chastised, excluded, challenged, and reminded of one's difference . . ." ¹⁴⁰ Nor is such treatment new. "Documentation of adverse treatment of vegetarians, a group to which vegans belong, dates back to the first century when Plutarch described

¹³⁴ *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 526 (1993).

¹³⁵ *United States v. Meyers*, 95 F.3d 1475, 1484 (10th Cir. 1996).

¹³⁶ 42 U.S.C. § 2000e-12.

¹³⁷ *Meyers*, 95 F.3d at 1484 (providing a test that looks at many factors including: (1) ultimate ideas, (2) metaphysical beliefs, (3) moral or ethical system, (4) comprehensiveness, and (5) accoutrements of religion. The court further divides the fifth factor into 10 further factors including: (a) founder, prophet, or teacher, (b) important writings, (c) gathering places, (d) keepers of knowledge, (e) ceremonies and rituals, (f) structure or organization, (g) holidays, (h) diet or fasting, (i) appearance and clothing, and (j) propagation).

¹³⁸ 29 C.F.R. § 1605.1.

¹³⁹ *Trans World Airlines, Inc. v. Hardison*, 432 U.S. 63, 72 (1977) (citing H.R. REP. NO. 88-914, at 26 (1963)).

¹⁴⁰ HUNT, *supra* note 112, at 8.

how flesh eaters often harassed vegetarians with inconsiderate, misguided questions about their lifestyle.”¹⁴¹

Thus, the choices the ethical vegan makes every day come at a price. “Mainstream society has often treated vegans with hostility or indifference, labelled vegans fanatics or freaks, and reduced veganism to a mere nutritional preference”¹⁴² Rabbi Ronen Lubitch, an Orthodox rabbi, noted that despite its untruthfulness, people in his community often see vegans as “left-wing activists,” despite the growing trend even within the Orthodox religion.¹⁴³ Because ethical veganism touches on ultimate ideas about life, purpose, and death like many other well-recognized non-theistic religions,¹⁴⁴ and the group experiences adverse treatment on a daily basis, they fall within the legislature’s statutory purpose. Thus, the ethical vegan is worthy of Title VII protection.

Additionally, though not precedential, other jurisdictions have begun to take steps towards embracing the protection of ethical veganism. The most notable example is Ontario, Canada. The Ontario Human Rights Commission, the organization charged with protecting human rights, has long used the word “creed” in their Code protecting people from discrimination.¹⁴⁵ For many years, it was thought to be synonymous with religion.¹⁴⁶ However, in late 2015, the Ontario Human Rights Commission updated its definition to note, “Creed may also include non-religious belief systems that, like religion, substantially influence a person’s identity, worldview and way of life.”¹⁴⁷ This change has been hailed as a step towards requiring accommodations for employees in areas such as wearing leather uniforms or the like.¹⁴⁸ Though not explicitly incorporating veganism, many animal groups have begun to take action to obtain an affirmative ruling.¹⁴⁹ What is so striking about this, however, is its similarity to the United States’ current system. The EEOC regulation and the incorporation of *Seeger* and *Welsh* seem to suggest a very similar standard to Ontario’s incorporation of ethical or moral beliefs that are not necessarily religious in the

¹⁴¹ *Id.* at 8–9.

¹⁴² *Id.* at 2.

¹⁴³ Stub, *supra* note 103.

¹⁴⁴ See discussion *supra* Sections IV.A, IV.B (elaborating on veganism views on purpose, life, and death).

¹⁴⁵ Dan Taekema, *Vegans Argue They’re a ‘Creed’ Under Ontario Human Rights Law*, STAR (Feb. 4, 2016), <https://www.thestar.com/news/gta/2016/02/04/vegans-argue-theyre-a-creed-under-ontario-human-rights-law.html> [<https://perma.cc/LEW7-5K4B>] (accessed Jan. 19, 2018).

¹⁴⁶ *Id.*

¹⁴⁷ *Id.* (citing ONT. HUMAN RIGHTS COMM’N, POLICY ON PREVENTING DISCRIMINATION BASED ON CREED (2015), at 1, http://www.ohrc.on.ca/sites/default/files/Policy%20on%20preventing%20discrimination%20based%20on%20creed_accessible_0.pdf [<https://perma.cc/H5ND-JPZ3>] (accessed Jan. 19, 2018).

¹⁴⁸ *Id.*; see Stub, *supra* note 103 (noting that the Israel Defense Force currently offers vegan food, faux leather boots, and berets made of fake wool).

¹⁴⁹ See Taekema, *supra* note 145 (discussing how the expansion of the definition of “creed” provides an avenue for ethical vegans to assert rights in future situations).

way one might normally think of such a term.¹⁵⁰ Thus, the idea that religion in the employment context should be broader is not one limited to just the United States.

C. Ethical Veganism Must Affect More Than Just Diet to Qualify

Opening the door to protect ethical vegans as a religion will not open the floodgates to various different creeds of religion.¹⁵¹ Critics may argue that the *Seeger* and *Welsh* cases were able to balance the floodgates concern with religion because the situation at hand was rare, whereas in the case of an ethical vegan, it likely will come up every day. However, this Paper is not proposing employers must serve exclusively vegan food, nor is it proposing all individuals who claim to be ethical vegans qualify as such. Nor is it proposing eliminating the BFOQ defense¹⁵² so employers lack any kind of a defense against the claimant. Rather, the first prong of the test requires an analysis of the sincerity of the employee's claim to be an ethical vegan. Thus, each individual claimant must put forth enough proof to suggest their beliefs in ethical veganism concern "ultimate ideas about life, purpose and death."¹⁵³ This would present one way the court could weed out potential claimants. In doing so, allowing ethical vegans to argue their individual beliefs fit the religion construct does no more than continue to further Title VII's mission—to prevent employment discrimination.¹⁵⁴

This begs the question of whether an ethical vegetarian¹⁵⁵ qualifies for such protections. This is a much more difficult question. However, courts have not required individuals be completely devout to be afforded protection. For example, in *EEOC v. Ilona of Hungary*, the court found the claimant established a prima facie case on the basis of her Judaism despite her concession that she was "not a particularly

¹⁵⁰ See *supra* notes 45–68 and accompanying text (describing what elements are considered when analyzing whether non-religious beliefs may be given the same recognition and protection as religious beliefs).

¹⁵¹ HUNT, *supra* note 112 at 26–27.

¹⁵² See discussion *supra* Section II.B (describing the BFOQ defense). For example, such a defense may be particularly relevant in the case of a hospital nurse's refusal to obtain a flu shot due to her close proximity with patients with compromised immune systems and the hospital's mission to aid patients to improve their health. However, this defense would only be available to the employer if there is no reasonable accommodation the employer can provide, such as the option of obtaining a flu shot that did not require the use of animals.

¹⁵³ MANUAL, *supra* note 106, at 8.

¹⁵⁴ 42 U.S.C. § 2000e.

¹⁵⁵ The term "ethical vegetarian," as used in this paper, is one who does not abstain from dairy products, but is similar to an ethical vegan in every other respect including abstaining from the eating of meat and purchase or consumption of items that harm animals.

religious person and that she does not observe every Jewish holiday.”¹⁵⁶

However, the case of a moral or ethical creed rather than a traditionally recognized religion may present difficult line drawing questions. For example, critics may try to analogize the adjudication in *Walter H. Samuel v. Department of Health and Human Services* to the case of an ethical vegan. In that adjudication, the claimant alleged that he “lives his life with a self-motivated virtue and honor” and being forced to conduct required interviews without the assistance of an interpreter violated such beliefs.¹⁵⁷ Though commendable, the adjudication reveals the claimant’s story lacked consistency.¹⁵⁸ Rather, the claimant first complained conducting such interviews was “too difficult,” then contended his additional services were not being properly compensated, before he ultimately alleged it violated his religion.¹⁵⁹

This adjudication highlights potential difficulties that may arise from the case of a developing ethical vegan or vegetarian or one whose beliefs shift over time. For example, what should a court do about the health vegan turned ethical vegan, as research makes it well-known that the people initially convinced by the health benefits of veganism may ultimately begin to adopt ethical reasons as well?¹⁶⁰ At what point should the court grant such beliefs religious status? Similarly, what about the vegetarian turned ethical vegetarian who has not yet given up dairy products?

This Paper does not, and indeed cannot, propose exactly where the line falls between an ethical vegan and a non-ethical vegan. That level of specificity can, and should, depend on the specific facts introduced by the claimant as to the strength of their beliefs. However, this Paper can propose the threshold question courts should look to. Unlike traditional religions, where claimants can admit they are not particularly devout and still qualify for protection, the inclusion of ethical veganism constitutes a newfound recognition of a moral or ethical belief that many courts will approach very skeptically. As a result, the threshold to prove such a belief will likely go further than traditional religions.

Thus, to qualify for protection based on religion, this Paper proposes a claimant must allege their veganism infuses their life in such a

¹⁵⁶ *Equal Emp’t Opportunity Comm’n v. Ilona of Hungary, Inc.*, 108 F.3d 1569, 1575–76 (7th Cir. 1997).

¹⁵⁷ *Walter H. Samuel v. Dep’t of Health and Human Services*, EEOC DOC 01850301, 1987 WL 774659, at *3 (Feb. 22, 1987).

¹⁵⁸ *Id.*

¹⁵⁹ *Id.*

¹⁶⁰ Maurer, *supra* note 21, at 4. Francis Janes, an EarthSave International leader, said: “I think if you ask today what my motivations are to live my lifestyle, health would be just a bonus now. For me, if someone told me today, if you came up to me with confirmed medical evidence that said ‘Being a vegetarian has no medical or health benefits,’ I would say to you, ‘I’m so clear about the ethical and environmental benefits of doing this that it doesn’t matter.’ I would still follow the path. And so your whole perspective on what brought you to this path in the first path and why you do it today . . . does shift and change.” *Id.* at 5.

way that their strong moral and spiritual principles guide them in ways beyond just their diet. For example, under this Paper's proposal, the person who claims, "I'm basically a vegetarian, but I will eat a burger every once in a while if I'm out with friends"¹⁶¹ clearly does not qualify for religious protection in the employment relationship because they are easily willing to compromise their moral or ethical beliefs. Conversely, an individual like Mr. Anderson, who refuses to eat animals, wear products made from animals, or engage in practices that harm animals,¹⁶² should qualify because his beliefs deeply affect many, if not all, aspects of his life. Everything from his food choices to his clothing choices to even his medication choices is affected by his ethical beliefs, thus suggesting they occupy the place of a religion.

V. CONCLUSION

In the mid-1960s, Congress enacted Title VII to protect employees from discrimination. Congress realized it could not protect all forms of discrimination, so it focused on protecting certain groups. It further delegated authority to a federal agency to continue to carry out the mission and intent of the statute. The federal agency's defining of religion as incorporating strong moral or ethical beliefs reflects a view that Congress intended to protect all beliefs held with the strength of traditional religious beliefs.

Ethical veganism reflects a theology that all sentient creatures are created equal and humans are not superior. Thus, ethical veganism reflects ultimate ideas about how one should live their lives daily, how sentient beings should die, and one's overarching purpose to maintain equality among beings throughout their life. In this way, ethical veganism meets the broad definition of religion under the federal employment discrimination laws. Further, mainstream society taunts ethical vegans and makes them feel inferior because of their beliefs, suggesting they need such federal protection. Thus, ethical veganism fits within the construct of religion in this context, and should be recognized as a religion for individuals seeking to bring a claim of employment discrimination in the workplace.

¹⁶¹ *Id.* at 20.

¹⁶² See Haldane, *supra* note 75 ("[Mr. Anderson] was dismissed in June after refusing to hand out the hamburger coupons as part of a promotion by the transit authority and Carl's Jr. restaurant to boost bus ridership. As a devout vegetarian, the driver said, the campaign violated his beliefs that animals should not be killed or eaten.").